

ASSEMBLY, No. 2080

STATE OF NEW JERSEY

217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex)

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District 38 (Bergen and Passaic)

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Assemblymen Benson, McKeon, Assemblywoman Spencer and

Assemblyman Gusciora

SYNOPSIS

Authorizes municipalities to facilitate private financing of water conservation, storm shelter construction, and flood and hurricane resistance projects through use of voluntary special assessments.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning the implementation of renewable energy and
2 energy efficiency systems and water conservation, storm shelter
3 construction, and flood and hurricane resistance projects,
4 amending P.L.1960, c.183 and P.L.2011, 187 and supplementing
5 chapter 56 of Title 40 of the Revised Statutes.

6

7 **BE IT ENACTED** *by the Senate and General Assembly of the State*
8 *of New Jersey:*

9

10 1. (New section) The Legislature finds and declares it to be the
11 public policy of this State that:

12 a. The implementation of and investing in energy and water
13 efficiency improvements to, and flood and hurricane mitigation
14 projects for existing properties is a critical component in conserving
15 natural resources and mitigating the effects of floods and
16 hurricanes, and is financially beneficial over time; upfront costs are
17 a barrier to major energy improvements;

18 b. PACE legislation provides an innovative way for property
19 owners to finance energy and water efficiency improvements which,
20 in turn, result in homeowners saving a significant sum in energy
21 costs and which also help communities create local jobs, result in
22 lower mortgage foreclosures, and stimulate local economics and
23 lower emissions; and

24 c. PACE financing will allow New Jersey municipalities to
25 contribute in order to help meet community sustainability,
26 greenhouse gas emissions reductions, and energy goals, and will
27 provide a valuable service to the citizens of their communities.

28

29 2. (New section) As used in this section, and in P.L.2011,
30 c.187 (C.40:56-1.4 et al.):

31 "Bonds" mean bonds or other obligations issued by a
32 municipality, county, or county improvement authority, as
33 applicable, for the purposes set forth in this section and in P.L.2011,
34 c.187 (C.40:56-1.4 et al.).

35 "Energy efficiency improvement" means an improvement to
36 reduce energy consumption through conservation or a more
37 efficient use of electricity, natural gas, propane, or other forms of
38 energy, including, but not limited to: air sealing; installation of
39 insulation; installation of energy-efficient electrical, heating,
40 cooling or ventilation systems; building modifications to increase
41 the use of daylight; replacement of windows; installation of energy
42 controls or energy recovery systems; installation of electric vehicle
43 charging equipment; and installation of efficient lighting
44 equipment.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 "Flood resistant construction project" means a project that
2 mitigates the likelihood of substantial flood damage, including but
3 not limited to the installation of break-away walls and building
4 elevation alterations.

5 "Hurricane resistant construction project" means an improvement
6 that brings a component of a structure into compliance with the
7 standards for a "wind-borne debris region" pursuant to the "State
8 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119
9 et seq.), or into compliance with a successor standard under that
10 code.

11 "PACE" is an acronym for the term "property assessed clean
12 energy."

13 "PACE project" means the purchase, lease, or installation, or any
14 combination thereof, of renewable energy systems or the energy
15 produced by such systems, energy efficiency improvements, water
16 conservation projects, flood resistant construction projects,
17 hurricane resistant construction projects, storm shelter projects, or
18 safe room projects, undertaken by property owners through a
19 purchase contract, lease, power purchase agreement, or through
20 other agreements or means, on properties within a municipality.

21 "PACE program" means a program established by a municipality
22 by ordinance, providing for the imposition of PACE special
23 assessments on properties within the municipality, in which the
24 owner of such property has requested the PACE special assessment.

25 "PACE special assessment" means a local improvement
26 assessment, in accordance with chapter 56 of Title 40 of the
27 Revised Statutes, to be imposed on a property in connection with a
28 PACE project.

29 "Private entity" means a private for-profit or non-profit
30 corporation, partnership, or any other form of private organization,
31 including but not limited to a "related competitive business segment
32 of a public utility holding company," or a "related competitive
33 business segment of an electric public utility or gas public utility,"
34 as defined under section 3 of P.L.1999, c.23 (C.48:3-51), so long as
35 the organization is not subject to the jurisdiction of the Board of
36 Public Utilities.

37 "Project costs" mean the costs associated with a PACE project,
38 and shall be deemed to include: the hard costs of leasing,
39 purchasing, constructing or acquiring the project; soft costs,
40 including but not limited to engineering fees, inspection fees and
41 permits, and costs relating to the measurement and verification of
42 project savings; costs of utilizing the PACE program, including but
43 not limited to program fees, closing costs, and interest and other
44 financing charges; and bond issuance costs, including but not
45 limited to professional fees and the costs of funding capitalized
46 interest, if any, or a debt service reserve fund, if any.

47 "Property" means an industrial, agricultural, residential or
48 commercial property within a municipality upon which a PACE

1 special assessment is imposed at the request of a property owner in
2 connection with a PACE project.

3 "Property owner" means the owner of a property within a
4 municipality who requests that a PACE special assessment be
5 imposed on the property in connection with a PACE project.

6 "Renewable energy system" means an improvement in which the
7 electrical, mechanical, or thermal energy is produced from a method
8 that uses one or more of the following fuels or energy sources:
9 hydrogen, solar energy, geothermal energy, bio-mass or wind
10 energy.

11 "Safe room project" or "storm shelter project" means an
12 improvement that creates a hardened structure specifically designed
13 to meet criteria set forth by the Federal Emergency Management
14 Agency and provide "near-absolute protection" in extreme weather
15 events, including tornados and hurricanes.

16 "Solar renewable energy certificate" shall have the same
17 meaning as set forth in section 3 of P.L.1999, c.23 (C.48:3-51).

18 "Water conservation project" means an improvement that
19 reduces water consumption, increases the efficiency of water use, or
20 reduces water loss.

21

22 3. Section 1 of P.L.2011, c.187 (C.40:56-1.4) is amended to read
23 as follows:

24 1. **【Upon application to and approval by the Director of the**
25 **Division of Local Government Services in the Department of**
26 **Community Affairs, the】** a. The governing body of a municipality
27 may adopt an ordinance to undertake the 【financing of the purchase
28 and installation of renewable energy system and energy efficiency
29 improvements】 development, implementation, administration, or
30 financing, or any combination thereof, of a PACE program.

31 b. Notwithstanding subsection a. of this section, municipalities
32 that (1) are receiving, or have received State Aid through the
33 Transitional Aid to Localities program within the three most recent
34 fiscal years, (2) are subject to State supervision pursuant to the
35 "Local Government Supervision Act (1947)," P.L.1947, c.151
36 (C.52:27BB-1 et seq.), or (3) are subject to the "Municipal
37 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
38 (C.52:27BBB-1 et al.) are prohibited from developing, financing, or
39 otherwise administering a PACE program unless the municipality
40 designates, by ordinance, a county or county improvement authority
41 to develop, administer, and finance, a PACE program to serve the
42 residents of the municipality. Notwithstanding any such
43 designation, the municipality shall continue to possess all rights to
44 impose, assess, collect and enforce any assessment imposed
45 pursuant to P.L.2011, c.187 (C.40:56-1.4 et al.).

46 The PACE program shall consist of, among other things, the
47 implementation of PACE projects to be undertaken by property

1 owners as **【a】** local **【improvement】** improvements and **【may**
 2 **provide】** the provision by ordinance for a **【"clean energy】** "PACE
 3 special assessment" to be imposed on **【a property】** properties within
 4 the municipality, if the owner of **【the】** a property requests the
 5 PACE special assessment in order to **【install such systems or**
 6 **improvements】** undertake a PACE project. **【Each improvement】**
 7 PACE projects on an individual property subject to the same PACE
 8 special assessment agreement collectively shall constitute a separate
 9 local improvement and shall be assessed separately to the property
 10 owner benefitted thereby. **【The clean energy special assessment**
 11 **shall be payable in quarterly installments. The terms of the clean**
 12 **energy special assessment shall be in accordance with the terms of**
 13 **the financing provided by the municipality pursuant to section 2 of**
 14 **P.L.2011, c.187 (C.40:56-13.1).】**

15 c. A municipality, or county or county improvement authority if
 16 designated by a municipality under subsection b. of this section,
 17 may designate a county, county improvement authority, another
 18 public entity, or one or more private entities to manage, oversee,
 19 administer, finance or implement, or any combination thereof, all or
 20 any part of the PACE program on the municipality's behalf. To the
 21 extent that a county, county improvement authority or other public
 22 entity is designated to manage, oversee, administer, finance or
 23 implement, or any combination thereof, all or any part of a PACE
 24 program on the municipality's behalf, the county, county
 25 improvement authority or other public entity may designate a one or
 26 more private entities to manage, oversee, administer, finance, or
 27 implement, or any combination thereof, all or any portion of such
 28 activities.

29 (cf: P.L.2011, c.187, s.1)

30
 31 4. Section 2 of P.L.2011, c.187 (C.40:56-13.1) is amended to
 32 read as follows:

33 2. a. A county, county improvement authority or other public
 34 entity, or a private entity designated by a municipality or a county,
 35 county improvement authority or other public entity, pursuant to
 36 subsection b. or c. of section 1 of P.L.2011, c.187 (C.40:56-1.4) to
 37 administer or implement a PACE program may: administer
 38 agreements between a private entity and property owners;
 39 administer agreements between municipalities and property owners
 40 pursuant to section 3 of P.L.2011, c.187 (C.40:56-13.2); administer
 41 agreements involving county improvement authorities pursuant to
 42 paragraph (2) of subsection (j) of section 12 of P.L.1960, c.183
 43 (C.40:37A-55); administer agreements involving private entities
 44 that participate in the program; administer the sale of solar
 45 renewable energy certificates from participating property owners;
 46 and undertake any other appropriate responsibilities as set forth in

1 its agreement with the municipality, county, county improvement
2 authority, or other public entity, as applicable.

3 b. Notwithstanding the provisions of the "Local Public
4 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), agreements
5 between a municipality, county, or county improvement authority
6 and a private entity shall be on such terms and conditions as the
7 municipality, county, or county improvement authority shall deem
8 necessary or desirable.

9 **【Upon application to and approval by the Director of Local**
10 **Government Services in the Department of Community Affairs, a**
11 **municipality may adopt an ordinance to establish a program to**
12 **finance the purchase and installation of renewable energy systems**
13 **and energy efficiency improvements by property owners.】**

14 c. The governing body of a municipality may apply to a county,
15 or to a county improvement authority that issues bonds pursuant to
16 paragraph (2) of subsection (j) of section 12 of P.L.1960, c.183
17 (C.40:37A-55), or may issue bonds to finance the program pursuant
18 to section 3 of P.L.2011, c.187 (C.40:56-13.2).

19 (1) Notwithstanding any other law to the contrary, bonds issued
20 by a county or municipality shall be authorized and issued by
21 ordinance of such county or municipality, may be issued in one or
22 more series, on such additional terms and may be sold at public or
23 private sale, all as set forth in the ordinance.

24 (2) (a) Bonds issued by a municipality, county, county
25 improvement authority or other public entity shall be non-recourse
26 obligations of such issuer and shall not be a general obligation of
27 such issuer, or the State of New Jersey.

28 (b) No review of the Local Finance Board with respect to the
29 authorization or issuance of the bonds shall be required.

30 (c) Bonds issued by a county improvement authority shall be
31 authorized and issued in the manner set forth in the "county
32 improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et
33 seq.).

34 (3) In addition, the municipal governing body, or the entity
35 serving as its administrator, may use funding through private
36 entities or public entities to finance the PACE program; provided
37 that no such funding shall be guaranteed or secured by the full faith
38 and credit of any public entity, including the State of New Jersey.

39 **Funds for the 【purchase and installation of renewable energy**
40 **systems and energy efficiency improvements shall be loaned】**
41 **implementation of PACE projects shall be made available to**
42 **property owners in exchange for a 【clean energy】 PACE special**
43 **assessment on the property pursuant to section 1 of P.L.2011, c.187**
44 **(C.40:56-1.4) 【, to be paid quarterly】. 【In the case of financing**
45 **provided by bonds issued by a county improvement authority, the**
46 **clean energy】 The PACE special assessment shall be used to repay**
47 **the debt service on the bonds or other public entity or private entity**

1 financing obligations and the project costs. **【In the case of**
2 financing provided by the municipality through the issuance of
3 municipal bonds, the clean energy special assessment shall be used
4 to repay the bonds.】

5 d. A property owner who **【purchases and】** installs a renewable
6 energy system under the program may also , if permitted by the
7 municipality, assign or transfer any solar renewable energy
8 certificates or other renewable energy certificates or credits that
9 accrue to the property owner from the operation of the system to the
10 municipality **【or】**, the county improvement authority **【to repay the**
11 loan for the system**】**, other public entity, or the private entity, as
12 applicable, which has financed the PACE project. If any solar
13 renewable energy certificates or other renewable energy certificates
14 or credits are assigned or transferred to a municipality, county,
15 county improvement authority, other public entity, or private entity,
16 the municipality, county, county improvement authority, other
17 public entity, or private entity is authorized to sell, grant, assign,
18 convey or otherwise dispose of its interest in the certificates or
19 credits to repay the bonds or obligations and the project costs. **【The**
20 Director of Local Government Services in the Department of
21 Community Affairs shall coordinate efforts with the Board of
22 Public Utilities to ensure that the amount of financing made
23 available by local programs authorized pursuant to this act is in
24 accordance with limits set from time to time by the Board of Public
25 Utilities in order to ensure that local programs further the goals of
26 the Office of Clean Energy in the Board of Public Utilities.

27 b. As used in this section,
28 "solar renewable energy certificate" shall have the same meaning
29 as set forth in section 3 of P.L.1999, c.23 (C.48:3-51).**】**
30 (cf: P.L.2011, c.187, s.2)

31
32 5. Section 3 of P.L.2011, c.187 (C.40:56-13.2) is amended to
33 read as follows:

34 3. a. **【Upon application to and approval by the Director of**
35 Local Government Services in the Department of Community
36 Affairs, the governing body of a municipality may establish the
37 amounts of money to be expended by the municipality for the
38 improvements authorized in sections 1 and 2 of P.L.2011, c.187
39 (C.40:56-1.4 and C.40:56-13.1). Any amount so appropriated may
40 be raised by the issuance of clean energy special assessment bonds
41 by the municipality. In making the appropriation, the governing
42 body may designate the particular projects to be financed to which
43 the moneys shall be applied.】 Notwithstanding any provision of
44 chapter 56 of Title 40 of the Revised Statutes (R.S.40:56-1 et seq.),
45 or any other law to the contrary, a municipality shall follow the
46 following process to establish and implement a PACE program:

1 (1) A municipality may adopt an ordinance pursuant to
2 R.S.40:49-2 to establish a PACE program without complying with
3 the publication, notice, and other requirements applicable to
4 ordinances providing for local improvements otherwise required
5 pursuant to R.S.40:49-6.

6 (2) The municipal ordinance may, but shall not be required to,
7 establish a form of special assessment agreement to be entered into
8 with PACE program participants, and identify whether the PACE
9 program will be implemented, financed, and managed by the
10 municipality, county, or by a county improvement authority, or by
11 another public entity or private entity. In lieu of including such
12 information in the ordinance establishing the PACE program, the
13 municipality may instead provide that one or more such items shall
14 be established through a subsequent municipal resolution.

15 (3) The municipal ordinance shall prescribe criteria for
16 participation in the PACE program at the time of the initial
17 financing, which criteria shall include, at a minimum, the following:

18 (a) that PACE financing recipients are either the legal owners of the
19 underlying property or provide the written consent of the legal
20 owners of the underlying property, are current on mortgage and
21 property tax payments with respect to the underlying property, and
22 are not the subject of a default or in bankruptcy proceedings, and
23 (b) an appropriate ratio of the assessment to the value of the
24 property, but in no circumstance may the combination of a PACE
25 financing and the existing loan-to-value ratio on a property exceed
26 100 percent. The ordinance may establish standards for the
27 maximum amount, or duration of PACE special assessments, or
28 both, but in no event shall the maximum duration of a PACE special
29 assessment exceed 30 years.

30 b. **【Clean energy special assessments and bonds issued to**
31 **finance them shall be issued and shall be generally subject to**
32 **R.S.40:56-21 et seq., as the director shall determine to be**
33 **applicable.】** The amount of a PACE special assessment shall be a
34 specific amount, not to exceed the project costs of the PACE
35 project. The specific amount of a PACE special assessment, which
36 shall be consented to by the property owner by its execution of a
37 special assessment agreement in the form promulgated by the
38 municipality, shall be deemed the benefit conferred with respect to
39 the property and shall be in lieu of the amount being determined by
40 any other procedures contained in this Title otherwise applicable to
41 determining the actual benefit conferred on the property. No other
42 confirmation or determination of the amount of the PACE special
43 assessment, including, but not limited to the procedure set forth at
44 R.S.40:56-30, shall be required.

45 c. **【The director is authorized and empowered to take such**
46 **action as deemed necessary and consistent with the intent of this act**
47 **to implement its provisions.】** A PACE special assessment shall be a
48 single, continuous first lien on the property against which the PACE

1 special assessment agreement is recorded, on and after the date of
2 recordation of the agreement. Upon recordation of the PACE
3 special assessment agreement in the land records of the county in
4 which the property is located, the lien thereof shall be perfected for
5 all purposes in accordance with law and the lien shall be a
6 continuous first lien upon the real estate described in the
7 assessment, paramount to all prior or subsequent alienations and
8 descents of such real estate or encumbrances thereon, except
9 subsequent taxes or assessments, without any additional notice,
10 recording, filing, continuation filing or action, until payment in full
11 of the PACE special assessment, notwithstanding any mistake in the
12 name or names of any owner or owners, or any omission to name
13 any owner or owners who are unknown, and notwithstanding any
14 lack of form therein, or in any other proceeding which does not
15 impair the substantial rights of the owner or owners or other person
16 or persons having a lien upon or interest in any such real estate.
17 Any confirmation of the amount of the assessment by the governing
18 body or by the court shall be considered as determining the amount
19 of the existing lien and not as establishing the lien. All assessments
20 shall be presumed to have been regularly assessed and confirmed
21 and every assessment or proceeding preliminary thereto shall be
22 presumed to have been regularly made or conducted until the
23 contrary be shown. A PACE special assessment shall not be
24 considered an "equivalent consensual security interest" for the
25 purposes of the "New Jersey Residential Mortgage Lending Act,"
26 sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.).
27 PACE special assessments shall be treated as governmental liens
28 rather than contractual liens for all purposes of law.

29 d. The funds to implement a PACE project may be disbursed to
30 the property owner at execution of the special assessment
31 agreement, or may be disbursed in installments over time. Such
32 funds shall not constitute public funds, and shall not be subject to
33 the laws governing public funds, including but not limited to laws
34 regarding the receipt, expenditure, deposit, investment or
35 appropriation of the same. PACE projects shall not be considered
36 "facilities" or "public facilities," within the meaning of the "county
37 improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et
38 seq.). Payments of PACE special assessments shall be due on
39 February 1, May 1, August 1 and November 1 in each year, and
40 shall commence as set forth in the PACE special assessment
41 agreement. It is not required that a PACE project be completed in
42 order for the obligation to make payments of the PACE special
43 assessment to commence. To the extent that upon completion of the
44 PACE project, funds remain which have not been disbursed to the
45 property owner for a PACE project, those funds on hand shall be
46 used to reduce the amount of the PACE special assessment. To the
47 extent that during the implementation of a PACE project, it
48 becomes apparent that additional funds may be needed to complete

1 the PACE project, the municipality and the property owner may
2 enter into a supplemental special assessment agreement for the
3 additional amount. Upon recordation of the supplemental special
4 assessment agreement, payments required to be made pursuant to
5 the supplemental PACE special assessment for the completion of
6 the PACE project shall be a continuous lien against the property in
7 accordance with subsection c. of this section.

8 e. When any payment of a PACE special assessment shall not be
9 made within 30 days after the time when that payment shall have
10 become due, interest thereon shall be imposed at the same rate as
11 may be imposed upon unpaid property taxes in the municipality,
12 and collected and enforced in the same manner as unpaid property
13 taxes, including by accelerated tax sale if the municipality shall
14 enforce collection of its unpaid property taxes through accelerated
15 tax sale. However, the balance due on PACE special assessments
16 shall not be subject to acceleration in the event of a default in
17 payment. Notwithstanding any other provision of law, in the event
18 that any lien on the property shall be exposed to tax sale, pursuant
19 to the "tax sale law," R.S.54:5-1 et seq., and any such lien is struck
20 off and sold to the municipality, the PACE special assessment shall
21 survive any subsequent action to foreclose the right of redemption
22 and continue as a first lien upon the real estate described in the
23 assessment, paramount to all prior or subsequent alienations and
24 descents of such real estate or encumbrances thereon, except
25 subsequent taxes or assessments, and provided that, while the
26 municipality holds such lien or owns such property, the
27 municipality shall not be responsible for or required to make any
28 payment in furtherance of or to satisfy any such PACE special
29 assessment.

30 f. PACE special assessments may be assigned directly by the
31 municipality, and any assignee thereof, as security for the
32 repayment of:

33 (1) bonds or other obligations issued by the municipality, county
34 or the county improvement authority to finance the PACE projects,
35 and

36 (2) if a PACE project is financed by a public entity or private
37 entity, any obligations of a property owner with respect to such
38 PACE project to such private entity or public entity, or any assignee
39 thereof.

40 Notwithstanding any law to the contrary, the assignment shall be
41 an absolute assignment of all of the municipality's right, title and
42 interest in and to the PACE special assessment, along with the
43 rights and remedies provided to the municipality under the special
44 assessment agreement, including, but not limited to, right to direct
45 the collection of payments due. PACE special assessments assigned
46 as provided hereunder shall not be included in the general funds of
47 the municipality, or be subject to any laws regarding the receipt,
48 deposit, investment or appropriation of public funds, and shall

1 retain such status notwithstanding enforcement of the assessment by
2 the municipality or assignee as provided herein. In the case of a
3 municipality which is otherwise subject to tax or revenue sharing
4 pursuant to law and which assigns PACE special assessments as set
5 forth in this section, such PACE special assessments shall not be
6 considered part of the tax or revenue sharing formula or calculation
7 of municipal revenues for the purpose of determining whether that
8 municipality is obligated to make payment to, or receive a credit
9 from, any tax sharing or revenue sharing pool.

10 g. Notwithstanding any other law to the contrary, a municipality,
11 county or county improvement authority, or, any of them, as
12 applicable, shall have the power to enter into any and all
13 agreements as may be necessary or desirable to effectuate the
14 purposes of P.L.2011, c.187 (C.40:56-1.4 et al.), on such terms and
15 conditions as the municipality, county or county improvement
16 authority shall deem reasonable, with or without public bidding.

17 h. In the event of any inconsistency between the provisions of
18 P.L.2011, c.187 (C.40:56-1.4 et al.) as modified by
19 P.L. c. (C.) (pending before the Legislature as this bill),
20 with respect to a PACE special assessment, and the provisions of
21 chapter 56 of Title 40 of the Revised Statutes, or any other law, the
22 provisions of P.L.2011, c.187 (C.40:56-1.4 et al.) shall control.
23 (cf: P.L.2011, c.187, s.3)

24
25 6. Section 11 of P.L.1960, c.183 (C.40:37A-54) is amended to
26 read as follows:

27 11. The purposes of every authority shall be (a) provision within
28 the county or any beneficiary county of public facilities for use by
29 the State, the county or any beneficiary county, or any municipality
30 in any such county, or any two or more or any subdivisions,
31 departments, agencies or instrumentalities of any of the foregoing
32 for any of their respective governmental purposes, (b) provision
33 within the county or any beneficiary county of public facilities for
34 use as convention halls, or the rehabilitation, improvement or
35 enlargement of any convention hall, including appropriate and
36 desirable appurtenances located within the convention hall or near,
37 adjacent to or over it within boundaries determined at the discretion
38 of the authority, including but not limited to office facilities,
39 commercial facilities, community service facilities, parking
40 facilities, hotel facilities and other facilities for the accommodation
41 and entertainment of tourists and visitors, (c) provision within the
42 county or any beneficiary county of structures, franchises,
43 equipment and facilities for operation of public transportation or for
44 terminal purposes, including development and improvement of port
45 terminal structures, facilities and equipment for public use in
46 counties in, along or through which a navigable river flows, (d)
47 provision within the county or any beneficiary county of structures
48 or other facilities used or operated by the authority or any

1 governmental unit in connection with, or relative to development
2 and improvement of, aviation for military or civilian purposes,
3 including research in connection therewith, and including structures
4 or other facilities for the accommodation of passengers, (e)
5 provision within the county or any beneficiary county of a public
6 facility for a combination of governmental and nongovernmental
7 uses; provided that not more than 50% of the usable space in any
8 such facility shall be made available for nongovernmental use under
9 a lease or other agreement by or with the authority, (f) acquisition
10 of any real property within the county or any beneficiary county,
11 with or without the improvements thereof or thereon or personal
12 property appurtenant or incidental thereto, from the United States of
13 America or any department, agency or instrumentality heretofore or
14 hereafter created, designated or established by or for it, and the
15 clearance, development or redevelopment, improvement, use or
16 disposition of the acquired lands and premises in accordance with
17 the provisions and for the purposes stated in **[this act]** the "county
18 improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et
19 seq.), including the construction, reconstruction, demolition,
20 rehabilitation, conversion, repair or alteration of improvements on
21 or to said lands and premises, and structures and facilities incidental
22 to the foregoing as may be necessary, convenient or desirable, (g)
23 acquisition, construction, maintenance and operation of garbage and
24 solid waste disposal systems for the purpose of collecting and
25 disposing of garbage, solid waste or refuse matter, whether owned
26 or operated by any person, the authority or any other governmental
27 unit, within or without the county or any beneficiary county, (h) the
28 improvement, furtherance and promotion of the tourist industries
29 and recreational attractiveness of the county or any beneficiary
30 county through the planning, acquisition, construction,
31 improvement, maintenance and operation of facilities for the
32 recreation and entertainment of the public, which facilities may
33 include, without being limited to, a center for the performing and
34 visual arts, (i) provision of loans and other financial assistance and
35 technical assistance for the construction, reconstruction, demolition,
36 rehabilitation, conversion, repair or alteration of buildings or
37 facilities designed to provide decent, safe and sanitary dwelling
38 units for persons of low and moderate income in need of housing,
39 including the acquisition of land, equipment or other real or
40 personal properties which the authority determines to be necessary,
41 convenient or desirable appurtenances, all in accordance with the
42 provisions of this act, as amended and supplemented, (j) planning,
43 initiating and carrying out redevelopment projects for the
44 elimination, and for the prevention of the development or spread of
45 blighted, deteriorated or deteriorating areas and the disposition, for
46 uses in accordance with the objectives of the redevelopment project,
47 of any property or part thereof acquired in the area of such project,
48 (k) any combination or combinations of the foregoing or following,

1 and (l) subject to the prior approval of the Local Finance Board, the
2 planning, design, acquisition, construction, improvement,
3 renovation, installation, maintenance and operation of facilities or
4 any other type of real or personal property within the county for a
5 corporation or other person organized for any one or more of the
6 purposes described in subsection a. of N.J.S.15A:2-1 except those
7 facilities or any other type of real or personal property which can be
8 financed pursuant to the provisions of P.L.1972, c.29 (C.26:2I-1 et
9 seq.) as amended. A county improvement authority shall also have
10 as its purpose the pooling of loans for any local governmental units
11 within the county or any beneficiary county that are refunding
12 bonds in order to achieve more favorable interest rates and terms
13 for those local governmental units. A county improvement
14 authority shall also have as its purpose the implementation,
15 management, oversight, administration, and financing of a PACE
16 program, as defined in section 1 of P.L. , c. (C.) (pending
17 before the Legislature as this bill).
18 (cf: P.L.2002, c.42, s.8)

19

20 7. Section 12 of P.L.1960, c.183 (C.40:37A-55) is amended to
21 read as follows:

22 12. Every authority shall be a public body politic and corporate
23 constituting a political subdivision of the State established as an
24 instrumentality exercising public and essential governmental
25 functions to provide for the public convenience, benefit and welfare
26 and shall have perpetual succession and, for the effectuation of its
27 purposes, have the following additional powers:

28 (a) To adopt and have a common seal and to alter the same at
29 pleasure;

30 (b) To sue and be sued;

31 (c) To acquire, hold, use and dispose of its facility charges and
32 other revenues and other moneys;

33 (d) To acquire, rent, hold, use and dispose of other personal
34 property for the purposes of the authority;

35 (e) Subject to the provisions of section 26 of **[this act]**
36 P.L.1960, c.183 (C.40:37A-69), to acquire by purchase, gift,
37 condemnation or otherwise, or lease as lessee, real property and
38 easements or interests therein necessary or useful and convenient
39 for the purposes of the authority, whether subject to mortgages,
40 deeds of trust or other liens or otherwise, and to hold and to use the
41 same, and to dispose of property so acquired no longer necessary
42 for the purposes of the authority; provided that the authority may
43 dispose of such property at any time to any governmental unit or
44 person if the authority shall receive a leasehold interest in the
45 property for such term as the authority deems appropriate to fulfill
46 its purposes;

47 (f) Subject to the provisions of section 13 of **[this act]**
48 P.L.1960, c.183 (C.40:37A-56), to lease to any governmental unit

1 or person, all or any part of any public facility for such
2 consideration and for such period or periods of time and upon such
3 other terms and conditions as it may fix and agree upon;

4 (g) To enter into agreements to lease, as lessee, public facilities
5 for such term and under such conditions as the authority may deem
6 necessary and desirable to fulfill its purposes, and to agree,
7 pursuant thereto, to be unconditionally obligated to make payments
8 for the term of the lease, without set-off or counterclaim, whether or
9 not the public facility is completed, operating or operable, and
10 notwithstanding the destruction of, damage to, or suspension,
11 interruption, interference, reduction or curtailment of the
12 availability or output of the public facility to which the agreement
13 applies;

14 (h) To extend credit or make loans to any governmental unit or
15 person for the planning, design, acquisition, construction, equipping
16 and furnishing of a public facility, upon the terms and conditions
17 that the loans be secured by loan and security agreements,
18 mortgages, leases and other instruments, the payments on which
19 shall be sufficient to pay the principal of and interest on any bonds
20 issued for the purpose by the authority, and upon such other terms
21 and conditions as the authority shall deem reasonable;

22 (i) Subject to the provisions of section 13 of **【this act】** P.L.1960,
23 c.183 (C.40:37A-56), to make agreements of any kind with any
24 governmental unit or person for the use or operation of all or any
25 part of any public facility for such consideration and for such period
26 or periods of time and upon such other terms and conditions as it
27 may fix and agree upon;

28 (j) (1) To borrow money and issue negotiable bonds or notes or
29 other obligations and provide for and secure the payment of any
30 bonds and the rights of the holders thereof, and to purchase, hold
31 and dispose of any bonds;

32 (2) To issue bonds, notes or other obligations to provide funding
33 **【to a municipality that finances the purchase and installation of**
34 **renewable energy systems and energy efficiency improvements】** for
35 the implementation of PACE projects by property owners as
36 provided in section 2 of P.L.2011, c.187 (C.40:56-13.1), and to
37 manage, oversee, administer, implement, and finance PACE
38 programs pursuant to subsection b. of section 2 of P.L.2011, c.187
39 (C.40:56-13.1);

40 (k) To apply for and to accept gifts or grants of real or personal
41 property, money, material, labor or supplies for the purposes of the
42 authority from any governmental unit or person, and to make and
43 perform agreements and contracts and to do any and all things
44 necessary or useful and convenient in connection with the
45 procuring, acceptance or disposition of such gifts or grants;

46 (l) To determine the location, type and character of any public
47 facility and all other matters in connection with all or any part of

- 1 any public facility which it is authorized to own, construct,
2 establish, effectuate or control;
- 3 (m) To make and enforce bylaws or rules and regulations for the
4 management and regulation of its business and affairs and for the
5 use, maintenance and operation of any public facility, and to amend
6 the same;
- 7 (n) To do and perform any acts and things authorized by **[this**
8 **act]** the "county improvement authorities law," P.L.1960, c.183
9 (C.40:37A-44 et seq.), under, through or by means of its own
10 officers, agents and employees, or by contract with any
11 governmental unit or person;
- 12 (o) To acquire, purchase, construct, lease, operate, maintain and
13 undertake any project and to fix and collect facility charges for the
14 use thereof;
- 15 (p) To mortgage, pledge or assign or otherwise encumber all or
16 any portion of its revenues and other income, real and personal
17 property, projects and facilities for the purpose of securing its
18 bonds, notes and other obligations or otherwise in furtherance of the
19 purpose of **[this act]** the "county improvement authorities law,"
20 P.L.1960, c.183 (C.40:37A-44 et seq.);
- 21 (q) To extend credit or make loans to redevelopers for the
22 planning, designing, acquiring, constructing, reconstructing,
23 improving, equipping and furnishing any redevelopment project or
24 redevelopment work;
- 25 (r) To conduct examinations and investigations, hear testimony
26 and take proof, under oath at public or private hearings of any
27 material matter, require the attendance of witnesses and the
28 production of books and papers and issue commissions for the
29 examination of witnesses who are out of the State, unable to attend,
30 or excused from attendance;
- 31 (s) To authorize a committee designated by it consisting of one
32 or more members, or counsel, or any officer or employee to conduct
33 any such investigation or examination, in which case such
34 committee, counsel, officer or employee shall have power to
35 administer oaths, take affidavits and issue subpoenas or
36 commissions;
- 37 (t) To enter into any and all agreements or contracts, execute
38 any and all instruments, and do and perform any and all acts or
39 things necessary, convenient or desirable for the purposes of the
40 authority or to carry out any power expressly given in **[this act]** the
41 "county improvement authorities law," P.L.1960, c.183 (C.40:37A-
42 44 et seq.), subject to the "Local Public Contracts Law," P.L.1971,
43 c.198 (C.40A:11-1 et seq.); and
- 44 (u) To pool loans for any local governmental units within the
45 county or any beneficiary county that are refunding bonds and do
46 and perform any and all acts or things necessary, convenient or
47 desirable for the purpose of the authority to achieve more favorable

1 interest rates and terms for those local governmental units.
2 (cf: P.L.2011, c.187, s.4)

3
4 8. This act shall take effect immediately.

5
6
7 STATEMENT

8
9 This bill authorizes municipalities to facilitate private financing
10 of water conservation, storm shelter construction, and flood and
11 hurricane resistance projects through the use of voluntary special
12 assessments, thereby expanding the "clean energy special
13 assessment," established by P.L.2011, c.187 (C.40:56-1.4 et al.),
14 and renaming it the "PACE special assessment," to utilize a concise
15 acronym for the term "property assessed clean energy."

16 Currently, the governing body of a municipality, upon
17 application to and approval by the Director of the Division of Local
18 Government Services in the Department of Community Affairs,
19 may undertake the financing of the purchase and installation of
20 renewable energy systems and energy efficiency improvements
21 made by property owners. By ordinance, the municipality may
22 provide for a "clean energy special assessment" to be imposed on
23 those properties when the property owner has requested the
24 assessment in exchange for receiving assistance with the initial
25 financing. Currently, the only projects eligible for this treatment are
26 installations of renewable energy systems and energy efficiency
27 improvements.

28 Under the bill, water conservation projects, flood resistant
29 construction projects, hurricane resistant construction projects,
30 storm shelter projects, and safe room projects are also eligible for a
31 "PACE special assessment." The bill allows most municipalities to
32 establish and operate PACE programs without applying for
33 approval by the Director of the Division of Local Government
34 Services. Municipalities that (1) have received Transitional Aid
35 within last three years, (2) are subject to State supervision under the
36 "Local Government Supervision Act (1947)," P.L.1947, c.151
37 (C.52:27BB-1 et seq.), or (3) are subject to the "Municipal
38 Rehabilitation and Economic Recovery Act," P.L.2002, c.43
39 (C.52:27BBB-1 et al.), are required by the bill to apply for approval
40 from the director prior to establishing a PACE program.

41 Under current law, to finance eligible projects, the governing
42 body of the municipality may issue bonds pursuant to section 3 of
43 P.L.2011, c.187 (C.40:56-13.2), or may apply to a county
44 improvement authority that issues bonds pursuant to paragraph (2)
45 of subsection (j) of section 12 of P.L.1960, c.183 (C.40:37A-55).
46 Currently, use of private financing is not explicitly prohibited.

47 This bill permits municipalities to issue bonds by ordinance,
48 upon the terms set forth in the ordinance. However, the bill

1 provides that no such funding shall be guaranteed by the full faith
2 and credit of the municipality, or any other public entity. The bill
3 also provides that the governing body of the municipality may use
4 private funds to finance eligible projects.

5 The bill allows a municipality, a county, or a county
6 improvement authority or other public entity, implementing a PACE
7 program on behalf of a municipality, to designate private entities to
8 finance the purchase and installation of eligible PACE projects. An
9 eligible entity shall include a "related competitive business segment
10 of a public utility holding company," or a "related competitive
11 business segment of an electric public utility or gas public utility,"
12 as defined under section 3 of P.L.1999, c.23 (C.48:3-51), so long as
13 the organization is not subject to the jurisdiction of the Board of
14 Public Utilities. Similar to programs administered by municipalities
15 and county improvement authorities, the bill provides for private
16 entities to be repaid through PACE special assessments. Because of
17 the specialized and qualitative nature of the services to be provided
18 through agreements between municipalities, county improvement
19 authorities or other public entities, and private entities to administer
20 PACE programs, the bill specifies that these agreements will not be
21 subject to the "Local Public Contracts Law," P.L.1971, c.198
22 (C.40A:11-1 et seq.).

23 The bill takes effect immediately upon enactment.